

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ZUBEARU BETTIS,

Plaintiff,

-against-

OFFICER GRIJALUA; CAPTAIN DARDEN;  
WARDEN LINCOLN-VITALE; CAPTAIN  
KIZZLER; KANG, Physician Assistant;  
CAPTAIN A. JORDAN, Disciplinary Hearing  
Officer,

Defendants.

21-CV-7505 (JPC)

ORDER OF SERVICE

JOHN P. CRONAN, United States District Judge:

Plaintiff, currently incarcerated at the Westchester County Jail, brings this *pro se* action under the Court's federal question jurisdiction, alleging that Defendants at the Metropolitan Correctional Center violated his constitutional rights. By order dated September 8, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).<sup>1</sup>

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses and the complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that a summons be issued. The

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

Court therefore extends the time to serve until 90 days after the date summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants, and check the box on the USM-285 forms labeled "Check for service on U.S.A." The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon the defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

### **CONCLUSION**

The Clerk of Court is instructed to issue summonses, complete the USM-285 forms with the addresses for Defendants Officer Grijalua, Officer Darden, Warden Lincon-Vitale, Captain Kizzler, Captain A. Jordan, and Physician Assistant Kang, check the box on the USM-285 forms labeled "Check for service on U.S.A.," and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is further directed to mail a copy of this order to Plaintiff, along with an information package.

SO ORDERED.

Dated: September 17, 2021  
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", is written over a horizontal line.

JOHN P. CRONAN  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. Officer Grijalua  
Metropolitan Correctional Center  
150 Park Row  
New York, N.Y. 10007
2. Officer Darden  
Metropolitan Correctional Center  
150 Park Row  
New York, N.Y. 10007
3. Warden Lincon-Vitale  
Metropolitan Correctional Center  
150 Park Row  
New York, N.Y. 10007
4. Captain Kizzler  
Metropolitan Correctional Center  
150 Park Row  
New York, N.Y. 10007
5. Captain A. Jordan  
Metropolitan Correctional Center  
150 Park Row  
New York, N.Y. 10007
6. Physician Assistant Kang  
Metropolitan Correctional Center  
150 Park Row  
New York, N.Y. 10007